IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2402 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE VACCINATORS FEDERATION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2402 of 1988

MR DC RAVAL for MR. MR ANAND for Petitioner

MR UDAY R BHATT, AGP for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 06/02/2003

ORAL JUDGEMENT

#. The petitioner challenges the fixation of pay scales of Vaccinators at Rs. 260-400 (Unrevised), equivalent to Rs. 950-1500 (Revised), vide item no.164 under the head

"Health and Family Welfare Department" of Schedule "C: to the ROP Rules, 1987, as illegal and unconstitutional, seeking a direction to fix the pay scale of Vaccinators in the unrevised pay scale of Rs. 350-560 and in the corresponding revised pay scale of Rs. 1200-2040 with effect from 1.1.86 and to fix the Vaccinators' pay in the pay scale of Rs. 330-560 (Unrevised) with effect from 1.1.73.

#. According to the petitioner-Federation, said to be representing all the Vaccinators working in the Panchayat service of the State, the pay scales of Vaccinators and B.C.G. Technicians were identical prior to the Desai Pay Commission Report. It is their case that the Vaccinators were performing the same work of vaccination as was being done by the B.C.G. Technicians whose field activity was confined to the field of disease of Tuberculosis. In para 2 of the petition, it is stated that prior to Desai Pay Commission "the Vaccinators and B.C.G. Technicians were in the pay scale of Rs. 125-200." The Desai Pay Commission had recommended the pay scale of Rs. 330-560 for both these posts. The State of Gujarat, however, accepted the pay scale of Rs. 330-560 for B.C.G. Technicians with effect from 1.1.73, but awarded the pay scale of Rs. 260-400 to the Vaccinators, which was contrary to the Recommendations of the Commission. According to the petitioner, B.C.G. Technicians and Vaccinators were having same qualification i.e. S.S.C. pass and the requirement of passing Sanitary Inspector's Examination was also common as per the statutory recruitment rules. It is also asserted that these posts were inter-transferrable.

#. Two Vaccinators had earlier filed Special Civil Application No. 2523/82, which was withdrawn to enable them to make a representation to the IIIrd Pay Commission. The IIIrd Pay Commission Report was not accepted by the Government. The Government appointed an Expert Committee headed by Justice S.A. Shah and as stated in para 5.1 of the petition in the Schedule to the Report of the Expert Committee which was published in April 1987, the Vaccinators were given unrevised pay scale of Rs. 260-400 (revised pay scale of Rs. 950-1500) which was the pay scale equivalent to Junior Clerks. According to the petitioners, the Vaccinators working in Ahmedabad Municipal Corporation were in the pay scale of Rs. 335-600 (Unrevised) though doing the same work. The petitioners have contended that denial of pay scale of Rs. 350-560 (Unrevised) to the petitioners was, therefore, arbitrary and violative of their fundamental rights in the matter of public employment.

#. The learned counsel appearing for the petitioner contended that the denial of the pay scale which is given to Vaccinators who were similarly situated, violated the doctrine of "equal pay for equal work". It was submitted that the Desai Pay Commission had recommended the same pay scale for both these posts and that recommendation was flouted by the Government without any valid basis. It was also submitted that the Vaccinators of the Ahmedabad Municipal Corporation who were doing similar work were given the higher pay scale which could not have been denied to the Vaccinators. It was submitted that since the educational qualification prescribed for recruitment to the post was the same and the Vaccinators were also required to pass Sanitary Inspector's examination, no distinction of pay scale was warranted.

4.1 The learned counsel placed reliance on the decision of the Supreme Court in Randhir Singh Vs. Union of India, reported in AIR 1982 SC 879 in which the Supreme Court recognized that the equation of posts and equation of pay are matters primarily for the Executive Government expert bodies like Pay Commission and not for Courts but held that where all the relevant considerations are the same, persons holding the identical posts may not be treated differentially in the matter of their pay. (See para-6 of the judgment).

4.2 Reliance was also placed on the decision of the Supreme Court in Employees of Tannery & Footwear Corporation of India Limited Vs. Union of India, reported in AIR 1991 SC 1367, in which the Supreme Court in para 15 of its judgment held that in view of the direction given by the courts for applying relevant pay scales recommended by a high power committee to various Public Sector Undertakings of the Government of India having the Central Government pattern of D.A., there would be parity in pay scales of the employees falling in four categories mentioned therein in the various enterprises of the Government of India which were following the Central Government D.A. pattern. It was held that there appeared to be no reason why the petitioners should be denied the similar parity in the matter of pay scales with the staff falling in the said four categories employed with the Cotton Corporation of India especially when the said employees were having the same pay scales in 1970. A direction was, therefore, issued to revise pay scales and allowances in a way that the revised pay scales and allowances in the four categories of the employees in the concerned cadres were at par with the pay scales and allowances of the staff

employed by the Cotton Corporation of India Ltd. on August 1, 1983.

#. The learned Assistant Government Pleader, appearing for the respondent submitted that there was no parity between the posts of Vaccinators and B.C.G. Technicians and that the B.C.G. Technicians were grouped with Sanitary Inspectors which was a post of promotion from the feeder cadre of Vaccinators and, therefore, the pay scales of Vaccinators cannot be the same as those of posts of their promotion namely Sanitary Inspectors. He referred to the affidavit-in-reply filed on behalf of the respondent for pointing out the reasons for which the claim of the Vaccinators for the pay scale which was given to the B.C.G. Technicians was not accepted.

5.1 The counsel relied upon the decision of the Supreme Court in Govt. of A.P. Vs. P. Hari Hara Prasad, reported in (2002) 7 SCC 707 in which the Supreme Court held that the High Court cannot, in exercise of its discretionary jurisdiction under Article 226 of the Constitution examine the nature of duties of employees in two different services to grant parity of pay on that basis. He also relied upon the decision of a Division Bench of this Court rendered on 7.4.94 in Letters Patent Appeal No. 228/93, wherein it was held that when the specialized agencies had considered the question of equation of pay scale and came to a finding that pay scale was properly given, the Court would be loathe to interfere with such conclusion arrived at after a detailed exercise by a committee constituted for that purpose.

#. Though the petitioner initially asserted in para 2 of the petition that pre-revised pay scales of Vaccinators and B.C.G. Technicians prior to Desai Pay Commission Recommendations were identical, in para 5 of the affidavit-in-rejoinder filed by the petitioner on 26.7.2002, it was admitted that the pay scale of Vaccinators was Rs. 100-170 in 1961 when the pay scale of B.C.G. Technicians was Rs. 135-250. It has been brought on record that the post of Sanitary Inspector is to be filled in by way of promotion from amongst the persons working in the cadre of Sanitary Sub-Inspectors and in the absence of a suitable person available from the cadre of Sanitary Sub-Inspectors, appointments may be made from amongst the persons working as Vaccinators. In para 3 of the affidavit-in-sur-rejoinder filed on behalf of the government, it is stated that the nomenclature of the post of BCG Technician was changed to that of MTB Supervisors and as the post of MTB Supervisor was

included in the cadre of Sanitary Inspectors, recruitment rules for the post of Sanitary Inspectors were made applicable to the post of MTB Supervisors also. A copy of the recruitment rules for the post of Sanitary Inspector is at Annexure : C to the said Sur-Rejoinder in which it is asserted that for the post of Sanitary Inspector, post of Vaccinator is a feeder cadre. In para 4 of the Sur-Rejoinder, it has been stated that the pay scales for the post of Vaccinator as well as BCG Technician were never identical. A copy of the extract from Revision of Pay Rules, 1975 is placed at Annexure :D to that Sur-Rejoinder in which the pay scale of both the posts prior to Desai Pay Commission were shown. Unrevised pay scale of BCG Technician was Rs. 135-250 while unrevised pay scale of Vaccinator was Rs. 125-200. Therefore, the very basis of the petitioner's claim in para 2 of the petition that the earlier pay scales of both the posts were identical is not borne out. On the contrary, under the ROP Rules, 1975, the post of BCG Technician carried higher pay scale. The nomenclature of the post of BCG Technician came to be changed to that of MTB Supervisor which was grouped with the Sanitary Inspector's post which was a post of promotion from the post of Vaccinator's cadre, provided no suitable Sanitary Sub-Inspector was available. In fact, as per the Rules which are annexed at Annexure:C to the said Sur Rejoinder, the post of Sanitary Sub-Inspector was required to be filled in by promotion from amongst the persons who were working in the cadre of Vaccinators. In view of this vertical relativity between the posts of Vaccinators and Sanitary Inspector as also MTB Supervisors (former BCG Technicians), which were grouped with Sanitary Inspectors, it cannot be said that the respondent acted arbitrarily in not prescribing the pay scale of the higher post of Sanitary Inspectors for the post of Vaccinators. This aspect seems to have weighed with the State Government in not accepting the earlier Recommendations of the Desai Pay Commission as is clear from para 8 of the affidavit-in-reply filed by the respondent in which it was pointed out that Desai Pay Commission had proposed the pay scale of Rs. 260-400 for the cadre of Vaccinators (vide para 74 Chapter 19 Panchayat & Health Department, Vol. II, Part II of the Report) and at the same time, proposed in the same Report the pay scale of Rs. 330-560 for the post of Sanitary Inspector and Vaccinator Supervisor/Vaccination Supervisor (Sr. Nos. 169 and 171 in the Schedule under Chapter 25 page 219 of the Report). It is then stated that the Cabinet Sub Committee examined the report of the IInd Pay Commission and after taking into consideration the relativity of the feeder cadre and promotional cadre

i.e. between the cadres of the Vaccinators and the cadre of the Sanitary Inspectors, Vaccinator Supervisors/Vaccination Supervisors, and the fact that the same pay scale for lower and higher post may create anomaly, suggested that the pay scale of Rs. 260-400 should be given to the cadre of Vaccinators which was a feeder cadre and Rs. 330-560 for the cadre of Sanitary Inspectors. It is thus clear that there was ample justification for not giving the higher pay scale given to the promotional post of Sanitary Inspectors to the lower post of Vaccinators. It cannot, therefore, be stated that the respondent acted arbitrarily in fixing the pay scale of Vaccinators. Vertical relativity while fixing the pay scale is an important factor to be kept in mind and it would have been unjust to prescribe the same pay scale for both the lower and higher posts.

#. The fixation of the pay scale for the posts in Panchayat service was to be done with reference to their own relativity which did not warrant giving of the same pay scale for the lower post which was a feeder cadre that was given to the higher post, rather than searching for horizontal relativity in other departments that would create anomaly. Therefore, the contention that because in the Municipal Corporation, Vaccinators were given higher pay scale, even Vaccinators working in the Panchayat Department should have been given that pay scale, cannot be accepted. If that pay scale was adopted, then it would have brought about the same anomaly of giving the same pay scale to both the lower and higher posts. There is, therefore, no substance in the claim advanced by the petitioner. The petition is rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

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